

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 03-0061P  
Gross and Adjusted Gross Income Tax  
Calendar Years 1997, 1998, and 1999**

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**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer was audited and found to have placed its service income into low rate gross income that amounted to more than seventy-five percent (75%) of its gross income tax liability. Taxpayer requests an abatement of the penalty.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer states that it believed the low rate should be utilized to determine income tax due on the gross receipts because income derived from its business would be considered "selling at retail", pursuant to the requirements of 45 IAC 1-1-13.

Taxpayer provides educational programming to its customers via satellite or videotape formats. A set fee is paid for the training. Taxpayer's customer has its own equipment on its premises and receives the service by satellite.

Taxpayer misread 45 IAC 1-1-13 because he must meet all of the four standards. Information contained in the audit indicates the taxpayer's customer owns the equipment. Taxpayer charges a fee for its services and the income it received should have been reported at the high rate of tax.

Taxpayer was also assessed a penalty for the underpayment of quarterly estimated taxes.

Taxpayer states that it overpaid quarterly estimate taxes in the beginning of that year. Taxpayer provided a copy of its Schedule IT-2220. The 2220, however, is for the return as filed, and not the audited figures. The audited figures indicate the taxpayer remitted less than ninety percent of the tax due.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

Taxpayer failed to correctly tax its gross income at the high rate of tax. Taxpayer failed to assure that the tax returns were correctly filed and apparently failed to verify the tax rates, which is clearly negligent. The taxpayer has not provided reasonable cause to allow penalty waivers.

### **FINDING**

Taxpayer's protest is denied.